



Australian Government

**Department of Employment and
Workplace Relations**

**ADR Provider Terms and Conditions
for Participation in the
Alternative Dispute Resolution Assistance Scheme**

ADR PROVIDER TERMS AND CONDITIONS FOR PARTICIPATION IN THE ALTERNATIVE DISPUTE RESOLUTION ASSISTANCE SCHEME

Outline of Alternative Dispute Resolution Assistance Scheme

- A. The Government has established the Alternative Dispute Resolution Assistance Scheme (the Scheme) to provide assistance of up to \$1,500 (inclusive of GST) (Cap) for those Employers and Employees who are in a certain type of dispute and who wish to refer their dispute to a private alternative dispute resolution (ADR) service provider rather than to the Australian Industrial Relations Commission (AIRC).
- B. The purpose of the Scheme is to provide a genuine dispute resolution choice for those in dispute between the AIRC and private ADR Providers. To foster greater choice in dispute resolution, the Government will offer assistance with respect to particular disputes that arise under the *Workplace Relations Act 1996*.
- C. The Professional Organisations have agreed to establish and maintain an up-to-date Panel of ADR Providers which undertake to provide ADR Services to Eligible Parties in accordance with the terms and conditions of the Scheme (the Terms and Conditions) which are set out below.
- D. An Employer or Employee who wishes to receive assistance under the Scheme will need to provide the Commonwealth with evidence of eligibility to receive assistance under the Scheme.
- E. Where the Commonwealth determines that an Employer or Employee is eligible for assistance under the Scheme (Eligible Parties), the Commonwealth will issue a Voucher Letter, which entitles the Eligible Parties to receive assistance up to the Cap. Additionally, if the Eligible Parties are located in remote or regional areas, an additional amount up to \$500 (inclusive of GST) will be available to the Eligible Parties to cover the ADR Provider's reasonable travel expenses under the Scheme (Travel Cap).
- F. Eligible Parties will be provided with the contact details of Professional Organisations from which they can source an ADR Provider. ADR Providers will have to be on a Professional Organisation's Panel for Eligible Parties to obtain a referral to them. Eligible Parties are required to agree on an ADR Provider before commencing the ADR Services.
- G. The Commonwealth will pay only one invoice in relation to each Eligible Dispute at the completion of the ADR Service. After the ADR Provider has provided the service in accordance with the Terms and Conditions of the Scheme, the Commonwealth will pay that ADR Provider within 28 days of receiving a properly detailed invoice of an amount up to the sum of \$1,500 (inclusive of GST) for the services provided to Eligible Parties provided that the service is given in accordance with the Terms and Conditions.

1. Interpretation

- 1.1. Unless the contrary intention appears a term in bold type has the meaning shown opposite it:

ADR	means alternative dispute resolution and includes any type of alternative dispute resolution including but not restricted to conferencing, mediation, assisted negotiation, neutral evaluation, case appraisal, conciliation and arbitration.
ADRAS	means the Alternative Dispute Resolution Assistance Scheme.
ADR Provider	means an organisation or an individual that is a Member of a Professional Organisation who has given an Undertaking and is on the Panel.

ADR Provider Agreement	means the form which Eligible Parties are required to complete, sign and return to the Commonwealth before commencing the ADR Services indicating their agreement to an ADR Provider.
ADR Services	means those services which an ADR Provider provides in accordance with the Scheme.
Cap	means the maximum sum of \$1,500 (inclusive of GST) able to be provided to Eligible Parties under the Scheme to contribute towards the cost of ADR Services.
Commonwealth	means the Commonwealth of Australia, represented by the Department of Employment and Workplace Relations.
Covered Matter	<p>means those matters in relation to which an Employer or Employee in dispute can make an application for assistance under the Scheme, being disputes:</p> <p>a. about:</p> <ul style="list-style-type: none"> i) entitlements (excluding wages) under the Australian Fair Pay and Conditions Standard (see section 175 of the <i>Workplace Relations Act 1996</i>); ii) the application of an award that is binding on the parties to the dispute (see section 514 of the <i>Workplace Relations Act 1996</i>); iii) the terms of a workplace agreement that is binding on the parties to the dispute (provided the agreement contemplates the use of a private ADR Provider); iv) the application of a workplace determination that is binding on the parties to the dispute (see section 504 of the <i>Workplace Relations Act 1996</i>); v) legislated minimum entitlements to parental leave, meal breaks and public holidays (see Part 12 of the <i>Workplace Relations Act 1996</i>); vi) the terms of a preserved State agreement that is binding on the parties to the dispute (see clause 15A in Schedule 8 of the <i>Workplace Relations Act 1996</i>); or vii) the terms of a notional agreement preserving a State award that is binding on the parties to the dispute (see clause 36 in Schedule 8 of the <i>Workplace Relations Act 1996</i>); <p>b. arising during negotiations for a collective agreement involving all parties to the dispute;</p> <p>c. where the AIRC has suspended a bargaining period to provide a “cooling off” period, or because industrial action is threatening to cause significant harm to a third party (see sections 432 and 433 of the <i>Workplace Relations Act 1996</i>);</p> <p>d. where the AIRC or the Minister has terminated a bargaining period because industrial action is threatening, or would threaten to:</p> <ul style="list-style-type: none"> i) endanger the life, the personal safety or health, or the welfare, of the population or of part of it; or

- ii) cause significant damage to the Australian economy or an important part of it (see sections 430 and 498 of the *Workplace Relations Act 1996*).

Eligible Dispute	means a dispute in relation to a Covered Matter and in relation to which an Employer and Employee meet the other conditions required by the Commonwealth for eligibility for assistance under the Scheme.
Eligible Parties	means an Employer and Employee who meet the eligibility criteria for financial assistance under the Scheme.
Employee	means an employee at common law.
Employer	means a person who is usually an employer.
Member	includes any member, sessional provider, sourced panel member, legal practitioner, employee or any other ADR Provider included on a panel that is maintained by a Professional Organisation.
Panel	means the panel maintained by the Professional Organisation of those ADR Providers which have undertaken to provide ADR Services in accordance with the Scheme.
Professional Organisation	means an organisation that facilitates the provision of ADR Services whom the Commonwealth accepts as a professional organisation and who agrees to maintain a Panel.
Scheme	means the ADRAS set up by the Australian Government to enable Eligible Parties to access private ADR Services.
Services Rendered Declaration	means the document in the form set out in Annexure A to the Terms and Conditions signed by the ADR Provider and the Eligible Parties to declare that the ADR Services invoiced by the ADR Provider have been supplied. This document is provided to the Commonwealth by the ADR Provider with the invoice.
Terms and Conditions	means the terms and conditions which, by signing the Undertaking, an ADR Provider undertakes to comply with as a condition of providing ADR Services under the Scheme.
Travel Cap	means the additional amount available to Eligible Parties located in remote or regional areas, of up to \$500 (inclusive of GST) to cover the ADR Provider's reasonable travel expenses under the Scheme.
Undertaking	means the undertaking set out at Part 3 of the ADR Provider Terms and Conditions, which the ADR Provider must sign and return to the Professional Organisation in order to be placed on the Panel.
Voucher Letter	means the letter which the Commonwealth provides to an Eligible Party after approval for assistance has been granted, setting details of its entitlement to ADR Services under the Scheme.

2. Terms and Conditions for ADR Providers which participate in the Scheme

- 2.1. The following are the Terms and Conditions which an ADR Provider must adhere to as a condition of being on the Panel to participate in the Scheme.
- 2.2. An ADR Provider must:
 - a. be a current Member of a Professional Organisation and have an appropriate awareness and knowledge of the *Workplace Relations Act 1996*.

- b. not provide ADR Services under the Scheme unless it has signed the Undertaking (at Part 3 below) and is on the Panel.
- c. conduct ADR Services only in those areas of ADR in which that ADR Provider has the skills and qualifications to provide ADR Services as set out in the Undertaking below.
- d. conduct ADR Services under the Scheme only as long as that ADR Provider remains a Member of the Professional Organisation and on the Panel.
- e. advise the Commonwealth when details, such as address or phone number, change;
- f. act in accordance with the service level requirements of the Professional Organisation of which it is a Member and provide the ADR Services in accordance with the professional standards of that Professional Organisation.
- g. in the case of an organisation, not allow any of its employees who in the past have been, or who become, the subject of findings of serious misconduct as determined either by a Professional Organisation or by a court of law, to undertake ADR Services.
- h. in the case of an individual, not undertake ADR Services if that individual has, or becomes, the subject of findings of serious misconduct as determined either by a Professional Organisation or by a court of law, to undertake ADR Services.
- i. provide ADR Services only in relation to disputes about Covered Matters (as defined at clause 1.1).
- j. before commencing ADR Services:
 - A. obtain the original Voucher Letter from the Eligible Parties to confirm their approval under the Scheme and ensure that their approval is currently valid (Voucher Letters must be presented within 28 days of date of issue otherwise the approval lapses);
 - B. satisfy itself that the dispute is in relation to a Covered Matter. As non-Covered Matters are not eligible for assistance under ADRAS, it is in the ADR Provider's best interest to assure themselves that the matters before them are covered under the Scheme;
 - C. satisfy itself that the Eligible Parties to the dispute are in agreement about engaging of the ADR Provider;
 - D. discuss with the Eligible Parties the different types of ADR which are available to them so that the Eligible Parties can make an informed decision about the type of ADR they consider to be the most appropriate for them;
 - E. provide in writing to the Eligible Parties details of the relevant fees charged by the ADR Provider for ADR Services (or each type of service where it is different for different types of ADR Service), including the hourly rate, and the expected time involved; and
 - F. clearly inform the Eligible Parties that responsibility for any ADR Services over and above the Cap and responsibility for any travel expenses over and above the Travel Cap must be assumed by the Eligible Parties.
- k. provide the ADR Services in a timely manner.
- l. after completing the ADR Services, complete and sign the Services Rendered Declaration in the form at Annexure A to these Terms and Conditions stating that it has provided the ADR Services for which it invoices the Eligible Parties and ensure that the Services Rendered Declaration is countersigned by the Eligible Parties confirming that the ADR Services as set out in the invoice have been provided.

- m. remit to the Commonwealth for payment, the invoice made out to the Eligible Parties for all ADR services provided to them under the Scheme and at the same time provide a copy to the Eligible Parties. The invoice should be remitted to the Commonwealth together with the original Voucher Letter and the Services Rendered Declaration. The invoiced amount will not be in excess of the Cap. Any amount in excess of the Cap must be paid by the Eligible Parties using the ADR Service.
- n. when claiming reasonable travel expenses, include a claim for these expenses with supporting documentation at the completion of the ADR Services with the invoice. Of this claim, the Commonwealth will pay up to an amount not exceeding the Travel Cap. Any amount in excess of this must be paid by the Eligible Parties using the ADR Service.
- o. allow the Auditor-General or any other person authorised by the Commonwealth to enter the premises of the ADR Provider upon reasonable notice to examine the records in relation to the ADR Services given to the Eligible Parties under the Scheme for the purpose of satisfying the Commonwealth that the public money it has paid to the ADR Provider in relation to the Scheme has been properly spent.
- p. comply with any other reasonable administrative arrangements that may be notified to the ADR Provider from time to time by the Commonwealth.

3. Undertaking to the Commonwealth by ADR Provider to provide ADR Services in accordance with the above Terms and Conditions

I

[name of person authorised to sign Undertaking on behalf of ADR Provider]

- a. undertake to provide ADR Services to Eligible Parties under the Scheme in accordance with the Terms and Conditions and to provide services that may include but are not limited to the following areas of ADR (*tick the relevant areas*):

- conferencing;
- mediation;
- assisted negotiation;
- neutral evaluation;
- case appraisal;
- conciliation;
- arbitration;
- other (*please provide details*)

- b. In addition, undertake on behalf of:

[name of ADR Provider]

that the organisation will:

- i) undertake to comply with the rules in Division 6 of Part 13 of the *Workplace Relations Act 1996*;
 - ii) provide ADR Services in accordance with the Terms and Conditions set out above and ensure that the person within the ADR Provider carrying out the ADR Services will be competent and experienced in the area of dispute resolution in which that person is conducting the ADR Services;
 - iii) carry out the ADR Services under the Scheme professionally in accordance with the professional standards of the Professional Organisation and not provide ADR Services for any Eligible Parties in a situation where there is a conflict of interest or potential for a conflict to arise;
 - iv) ensure that no person in the ADR Provider who has been, or becomes, subject to any findings of serious misconduct will provide services in the Scheme;
 - v) accept payment from the Commonwealth up to the Cap and seek payment of any amounts in excess of this from the Eligible Parties using the ADR Service; and
 - vi) repay the Commonwealth any amount that the Commonwealth pays for ADR Services which were not properly provided in accordance with the Terms and Conditions.
- c. I certify that neither:

[name of ADR Provider]

nor any of its agents or employees is not currently subject to any investigation by the Professional Organisation or any proceedings in a court of law in relation to serious misconduct and there have been no findings of serious misconduct against

it in the past and to the best of my knowledge after having made all due enquires there are no findings of misconduct against any of the other employees of the ADR Provider.

d. I acknowledge on behalf of:

[name of ADR Provider]

that:

- i) being on the Panel does not guarantee any specific referrals in relation to the Scheme and it is up to Eligible Parties to determine from the list provided by the Professional Organisation which ADR Provider they choose to use;
- ii) an ADR Provider is not entitled to be paid unless it provides ADR Services in accordance with the Terms and Conditions;
- iii) if an ADR Provider is paid other than in accordance with the Terms and Conditions, the amount paid is a debt due to the Commonwealth and recoverable by the Commonwealth in any court of competent jurisdiction;
- iv) any complaints by Eligible Parties about the professionalism of the services provided are matters for the Professional Organisation of which they are a Member to deal with; and
- v) any complaints by an ADR Provider in relation to payment by the Commonwealth under the Scheme are a matter for the Commonwealth to deal with.

Signed by

[name of person authorised to sign Undertaking on behalf of ADR Provider]

being duly authorised by

[name of ADR Provider]

to sign this Undertaking on its behalf.

Signature

Position

Date

ADR Provider Contact Details

ADR Provider ABN

Postal Address

Telephone Number

Fax Number

Email Address

Please return the completed Undertaking to the professional organisation of which you are a member for inclusion on their panel. The professional organisation will forward a copy of the Undertaking to the Department of Employment and Workplace Relations.



ADRAS Alternative Dispute Resolution Assistance Scheme

SERVICES RENDERED DECLARATION

Reference Number:

PART A – Declaration by ADR Provider

ADR Provider Name

ADR Provider Business Name

Name of Authorised ADR
Provider Representative who
conducted the ADR Services

**ADR Services
Provided**

I, (name of representative) declare

that (the ADR provider), has

provided the following ADR Service/s to the employer and employee/s in dispute
(more than one service may be selected):

- Conferencing
- Mediation
- Assisted Negotiation
- Neutral evaluation
- Case appraisal
- Conciliation
- Arbitration
- Other (please describe the ADR Services provided)

These ADR Services were provided on (please state the date/s):

In total the ADR Provider completed (please set out hours of work in relation to this matter):

The total cost of the ADR services charged by the ADR provider is (\$ amount):

Nature of Dispute

Please note that assistance under the Scheme is only available for disputes listed in these categories.

Please select which of the following categories the dispute related to:

- An entitlement under the Australian Fair Pay and Conditions Standard
- The application of an award
- The terms of a workplace agreement (Collective Agreement or an Australian Workplace Agreement)

	<input type="checkbox"/> The application of a workplace determination <input type="checkbox"/> The application of legislated minimum entitlements to: <ul style="list-style-type: none"> <input type="checkbox"/> Meal breaks, <input type="checkbox"/> Parental leave, or <input type="checkbox"/> Public holidays <input type="checkbox"/> The terms of a preserved State agreement <input type="checkbox"/> The terms of notional agreement preserving a State award <input type="checkbox"/> A dispute arising during negotiations for a collective agreement <input type="checkbox"/> The Australian Industrial Relations Commission (AIRC) has suspended a bargaining period to provide a “cooling off” period <input type="checkbox"/> The AIRC or the Minister has terminated a bargaining period because industrial action is threatening or would threaten to endanger life, safety, health, or welfare of the population or of part of it; or cause significant damage to an important part of the Australian economy
Settlement of Dispute	Was the dispute: <ul style="list-style-type: none"> <input type="checkbox"/> Settled <input type="checkbox"/> Partially settled <input type="checkbox"/> Not settled – if so please select why: <ul style="list-style-type: none"> <input type="checkbox"/> Parties to the dispute could not agree <input type="checkbox"/> A party to the dispute withdrew <input type="checkbox"/> Other (if other, please state the reason the dispute was not settled): <div style="border: 1px solid black; height: 20px; width: 100%; margin-top: 5px;"></div>
Claim for ADR Provider’s Reasonable Travel Expenses	Have you included a Travel Claim Form? <ul style="list-style-type: none"> <input type="checkbox"/> Yes <input type="checkbox"/> No <p><i>Please note: a separate Travel Claim Form should be completed if reasonable travel expenses are being claimed where the ADR provider has been required to travel to assist parties located in regional or remote areas. The Travel Claim Form is available on the WorkChoices website – www.workchoices.gov.au.</i></p>
ADR Provider Confirmation	<ol style="list-style-type: none"> 1. The information provided in this form is true and correct to the best of my knowledge. 2. I confirm that we have provided the ADR services as set out above. 3. I acknowledge that the giving of false or misleading information is a serious offence and penalties may result. <p>Authorised ADR Provider Representative Signature <input style="width: 450px; height: 25px;" type="text"/></p> <p>Authorised ADR Provider Representative Position <input style="width: 450px; height: 25px;" type="text"/></p> <p>Date <input style="width: 250px; height: 25px;" type="text" value=" / /"/></p>

PART B – Declaration by Eligible Parties (please read carefully before signing)

If there are more parties to the dispute, please make copies of this page and complete for each further party to the dispute.

DECLARATION BY ELIGIBLE PARTIES

1. The information provided in this form is true and correct to the best of our knowledge.
2. We confirm that we have received the ADR services as set out above.
3. We acknowledge that the giving of false or misleading information is a serious offence and penalties may result.

Employer Signature

Employer Name (*block letters*)

Date

Employee Signature

Employee Name (*block letters*)

Date

Employee Signature

Employee Name (*block letters*)

Date

Employee Signature

Employee Name (*block letters*)

Date

Employee Signature

Employee Name (*block letters*)

Date

Employee Signature

Employee Name (*block letters*)

Date